STRAITS SETTLEMENTS REPORTS.

PUBLISHED BY AUTHORITY.

[ORIGINAL CIVIL JURISDICTION]
TERRELL, J.
April 11, 1935.

MONG BINTE HAJI ABDULLAH (f)...Plaintiff.

vs.

DAING MOKKAH BIN DAING PALAMAI.....Defendant.

[SINGAPORE SUIT No. 255 of 1934]

Breach of promise of marriage—Parties both Mohammedans—Non-application of Mohammedan law.

A Mohammedan woman has in the Colony of the Straits Settlements the right to claim in a proper case against a Mohammedan man for damages for breach of promise of marriage. The several Charters of Justice only import so much of the native religious manners and customs as is required by the necessity of preventing the injustice or oppression which would ensue if the law of England were applied to alien races unmodified. In the present case the converse of that proposition would be more correct namely that if the principles of English law were not applied, injustice and oppression might result; and therefore the principles of English law are to be applied in such a case.

Trial of Issues.

In this case the plaintiff sued the defendant for damages for breach of promise of marriage aggravated by seduction. No special damages were claimed.

The defendant in his defence pleaded that the Court had no jurisdiction to entertain the action and alternatively that the Statement of Claim disclosed no cause of action and also that the plaintiff had suffered no damage.

An order was thereupon made directing the trial of these issues as preliminary objections.

Vaux and *Hashim* for the defendant.

Menon for the plaintiff.

Counsel for the defendant advanced no argument in support of the plea that the Court had no jurisdiction but submitted that the case was one for reference under Section 14 or 15 of Ordinance No. 51 (Arbitration). The judgment deals with the remainder of the arguments put forward on behalf of the defendant.

Cur. Adv. Vult.

TERRELL, J.—The plaintiff alleges that the defendant promised to marry her, that relying on such promise she allowed herself to be seduced, that she became pregnant of a child which was born in due course and that the defendant now refuses to marry her. The plaintiff was a Mohammedan unmarried woman and the defendant is also a Mohammedan. All material allegations of fact are put in issue by the defence, but in addition the defendant alleged in paragraph 2 of the defence that the Court had no jurisdiction to entertain the claim and, alternatively, paragraph 3, that the statement of claim disclosed no cause of action, and paragraph 4 that the plaintiff had suffered no damage. As these defences appeared to be in the nature of preliminary objections I directed such issues to be tried first. If the defendant succeeded on any of them further consideration of the facts would clearly be superfluous. This judgment therefore is confined to the preliminary objections.

At the hearing I understood defendant's counsel not to press the submission that the Court had no jurisdiction. He argued, however, that according to Mohammedan Law such an action could not be entertained. Without referring to the various authorities I am willing to accept Dr. Withers Payne's proposition that according to Mohammedan Law sexual connection before marriage is an offence not only against religion but against the state, and that no Mohammedan Court would grant relief in a civil action for a wrong which is regarded in the nature of a crime on the part of both parties to the suit. The first question, however, that arises is whether Mohammedan Law applies at all and if so to what extent. So far as concerns statute law the question is left untouched as Ordinance No. 26 (Mohammedans) is only concerned with Mohammedan women after marriage.

Apart from statute law it must be remembered that by virtue of the various Charters the English Common Law regulates the right of all persons in the Straits Settlements whatever their religions "so far as circumstances will admit." There is no provision in the Straits Settlements Charters, as there is in some of the Indian Charters, that Mohammedan Law shall be administered for Mohammedans and Hindu Law for Hindus. Nor is the position the same as it is in the Federated Malay States where by virtue of the religion of the parties Mohammedan Law would be applicable.

The principle as to how far the law of England is to be applied in a case such as this is stated succinctly in the recent Privy Council case of *In re Khoo Thean Tek's Settlements*, L.R. 1930, A.C. p. 346 at p. 355, where it was held as follows:—

> "The modifications of the law of England which obtain in the Colony in the application of that law to the various alien races established there arise from the necessity of preventing the injustice or oppression which would ensue if that law were applied to alien races unmodified."

The judgment proceeded to reaffirm the view expressed by Sir Benson Maxwell, C.J. in *Choa Choon Neoh* v. *Spottiswoode*, (1 Kyshe p. 216 at p. 221) which had already been cited with approval in the Privy Council case of *Yeap Cheah Neo* v. *Ong Cheng Neo*, (L.R. 6 P.C. 381 at p. 396). The case of *Choa Choon Neoh* v. *Spottiswoode*, was decided in 1869 and dealt in particular with the application of the English rule as to perpetuities, but in his judgment Sir Benson Maxwell was clearly adopting the more general principles laid down by him in 1858 in the well known case of *Regina* v. *Willans*, 3 Kyshe p. 16, where he decided that such native law as had been recognized up to 1858 had been so recognized not because of the Charters but because of the general principles of English Law, and that following such principles certain native religions and customs would have been recognized even if the Charters had been silent on the subject. In the course of his judgment he says "But where the law of the place is inapplicable to the parties by reason of peculiarities of religious opinions and usages, then from a sort of moral necessity the validity of the marriage depends on whether it was performed according to the rites of their religion." On the other hand, in the Six Widows case, *Choo Ang Chee* v. *Neo Chan Neo & others*, 12 S.S.L.R. p. 120, Sir Thomas Braddell, who was the Judge of first instance, and Sir W. Hyndman-Jones in the Court of Appeal, both relied on the particular words of the Charter which gave the Courts of the Colony jurisdiction in ecclesiastical matters "so far as the several religions, manners and customs of the inhabitants of the said Settlements and places will admit." Although the Six Widows Case did not go to the Privy Council, the correctness of the decision has been upheld in subsequent Privy Council cases (see *Cheang Thye Phin* v. *Tan Ah Loy*, L.R. 1920 A.C. p. 369 and the first *Khoo Thean Tek* case, *Khoo Hooi Leong* v. *Khoo Hean Kwee*, L.R. 1926 A.C. p. 529).

The decision in the second *Khoo Thean Tek* case, 1930 A.C. p. 346, does not refer to the Charters at all, and it would appear that the *ratio decidendi* was the principle enumerated by Sir Benson Maxwell in *Regina* v. *Willans* and adopted by Sproule, J. in the Court of first instance and Stevens, J. in the Court of Appeal. I do not think, however, that there is any inconsistency between the Privy Council approving the principle laid down by Sir Benson Maxwell and also approving the argument founded on the particular words in the Charters as applied to the ecclesiastical jurisdiction of the Courts. It will be noticed that in ecclesiastical matters the Charters refer specifically to native "religions, manners and customs," whereas in civil matters generally the Charters direct the law of England to be applied "so far as circumstances will admit."

There does not appear to be any essential distinction and if the law of England has, to a limited extent and where justice requires it, given a modified recognition to certain native customs, manners and religions, the Charters have only made explicit what was already implicit. In either case the principle is clear and it is, as stated by the Privy Council, "the necessity of preventing the injustice or oppression which would ensue if that law (the law of England) were applied to alien races unmodified."

Applying these principles to the facts of the present case, I am unable to accept the argument that because the plaintiff would fail in her action if the strict rules of Mohammedan Law were applied, she must also fail under the application of English law to persons of her religion. One starts with the basis that the plaintiff has all the rights which she would have under English principles of law and one of such rights is undoubtedly a right to claim for damages for breach of promise of marriage aggravated by seduction. Can it be said that if these principles were applied strictly it would result in injustice or oppression? It appears to me that if she can prove her case the converse proposition would be more correct, namely that injustice and oppression would result if such principles were not applied. I am quite prepared to listen to argument that the status of a Mohammedan married woman is different to that of the status of a woman married according to English law and that accordingly damages cannot be assessed on the same principles, but that would merely affect the quantum, and not abrogate the right to sue.

I find therefore that the defendant's preliminary objections fail and that the action must proceed on the merits.

Order accordingly.

Solicitor for the Plaintiff—*K. P. K. Menon.*
Solicitors for the Defendant—*Rodyk & Davidson.*

[CRIMINAL REVISIONAL JURISDICTION]
HUGGARD, C.J.
April 30, 1935.

REX vs. NADAISON

[SINGAPORE MISCELLANEOUS APPLICATION No. 1 of 1935]

Ordinance No. 61 (Pawnbrokers) S. 28 (1). —Conditional Order for return of pawned articles.

The making of a conditional order under S. 28 (1) of Ordinance No. 61 (Pawnbrokers) is a matter within the discretion of the Magistrate but such discretion must be exercised upon definite grounds. There must be something arising from the conduct of the owner or from the other circumstances of the case before the Court can properly deprive an owner of his right to the unconditional return of property which has been stolen from him.

Criminal Revision.

Worley, D.P.P., for the Crown.
Walters for the pawnbroker.